

**REMCHO, JOHANSEN & PURCELL, LLP**  
ATTORNEYS AT LAW

1901 HARRISON STREET, SUITE 1550  
OAKLAND, CA 94612  
PHONE: (510) 346-6200  
FAX: (510) 346-6201  
EMAIL: aw@rjp.com  
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen  
James C. Harrison  
Thomas A. Willis  
Karen Getman  
Margaret R. Prinzing  
Andrew Harris Werbrock  
Harry A. Berezin

Joseph Remcho (1944-2003)  
Kathleen J. Purcell (Ret.)

October 6, 2016

OFFICE OF GENERAL  
COUNSEL

2016 OCT 11 PM 3:07

RECEIVED  
FEDERAL ELECTION  
COMMISSION

**VIA EMAIL AND FEDERAL EXPRESS**

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20436

Re: MUR 7121

Dear Mr. Jordan:

We are counsel to Ami Bera for Congress (“the Committee”), the principal campaign committee of Representative Ami Bera, Jennifer May in her official capacity as Treasurer, and Representative Bera (collectively, “Respondents”). We write in response to the complaint filed by the Foundation for Accountability and Civic Trust (“FACT”) on July 26, 2016 (“the Complaint”). The Complaint – which does not even allege a violation of the Federal Election Campaign Act (the “Act”) or Commission rules by Respondents – is the second one filed by FACT over the same incident. Like the first, it consists solely of conclusory assertions and speculation, without any basis in fact. And like the first, it must be promptly dismissed.

As the Commission is aware, earlier this year, Representative Bera’s father, Babulal Bera, pled guilty to making excessive contributions and contributions in the name of another.<sup>1</sup> The Complaint alleges that, as part of this “massive straw donor scam,”<sup>2</sup> Michael Eggman for Congress made a contribution to Respondents knowing that it would be reimbursed by Babulal Bera and that, 10 days later, Babulal Bera in fact reimbursed the contribution.<sup>3</sup> But

<sup>1</sup> Plea Agreement, *United States v. Babulal Bera*, No. 16-cr-00097 (E.D. Cal. May 10, 2016).

<sup>2</sup> Complaint at 3.

<sup>3</sup> *Id.* at 2.

1704441-0011

there is simply no factual basis to support a finding that Respondents accepted a contribution that was made in the name of another, let alone that they accepted it "knowingly."<sup>4</sup>

*First*, the Department of Justice's investigation provides no basis to conclude that the Eggman for Congress contribution was reimbursed by Babulal Bera or that Respondents were aware of any such reimbursement. It demonstrates precisely the opposite. The Department of Justice has long acknowledged that Respondents had no knowledge of, or involvement in, Babulal Bera's wrongdoing. At the press conference where he announced the plea bargain, U.S. Attorney Phillip A. Talbert stated:

Congressman Bera and his campaign staff have been fully cooperative in this investigation. . . . To date, there is no indication from what we've learned in the investigation that either the congressman or his campaign staff knew of, or participated in, the reimbursements of contributions.<sup>5</sup>

Moreover, just last month, the Department of Justice announced that it was closing the investigation and that it would not pursue additional charges against any other party.<sup>6</sup> And despite its extensive investigation, the Department has never, to Respondents' knowledge, identified the Eggman for Congress contribution as a subject of controversy.

*Second*, the Complaint itself offers no specific facts to support its conclusory accusations. "The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act]."<sup>7</sup> Moreover, "[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true."<sup>8</sup>

In cases where the alleged intermediary for a contribution is a political organization, the Commission has only found reason to believe that respondents violated the Act

<sup>4</sup> See 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(iv).

<sup>5</sup> John Myers, *'I have, in fact, done the crime': Rep. Ami Bera's father admits illegal campaign contributions*, L.A. Times (May 10, 2016).

<sup>6</sup> See Sarah D. Wire, U.S. attorney's office says no more charges coming in Babulal Bera money laundering case, L.A. Times (Sept. 16, 2016), available at <http://www.latimes.com/politics/essential/la-pol-sac-essential-politics-updates-u-s-attorney-s-office-says-no-more-1474052899-htm1story.html>.

<sup>7</sup> Statement of Reasons, Commissioners Mason, Sandstrom, Smith & Thomas, MUR 4950 (Dec. 21, 2000); see 11 C.F.R. § 111.4(d).

<sup>8</sup> *Id.*; see Statement of Reasons, Commissioners Mason, Sandstrom, McDonald, Smith, Thomas & Wold, MUR 5141 (Apr. 17, 2002).

1704441022

when there was evidence that contributions were provided to the political organization with an understanding or intent that they be passed on to a third party.<sup>9</sup> In contrast, in cases where there was no evidence of such an intent or understanding, the Commission has not found reason to believe. For example, in MUR 5304, former Rep. Cardoza's state committee made seven contributions to other state candidate committees and PACs, which in turn, contributed to Rep. Cardoza's federal campaign. In a few cases, these contributions were made less than a week apart and were in similar amounts.<sup>10</sup> However, the Commission dismissed the matter, on the basis that the contributions were legal on their face and that the timing and amount of the contributions alone did not raise suspicion about their legality. "Without more to support the allegations of an illegal scheme, there is not a 'sufficiently specific allegation' warranting 'a focused investigation that can prove or disprove the charge,' and Complainant's 'unwarranted legal conclusions' and 'mere speculation' should not be credited."<sup>11</sup>

Here, the Complaint bases its theory solely on the timing of two contributions – a \$1,000 contribution from Eggman for Congress to the Committee on June 20, 2013, and a \$1,000 contribution from Babulal Bera to Eggman for Congress on June 30, 2013. As the Commission has made clear, the timing and amount of two contributions is not enough to lead to a finding of reason to believe. In MUR 5304, where there were multiple reciprocal contributions made within an even shorter time span, the Commission still dismissed the matter. *A fortiori*, the Commission must do the same here.

*Lastly*, Respondents are simply unaware of any facts that would call into question the legality of the contribution received from Eggman for Congress. For their part, Respondents are not aware of any agreement or arrangement whereby Eggman for Congress would be reimbursed in exchange for making a contribution to the Committee. And, as there has been no credible evidence that calls into question the legality of the contribution, Respondents were under no obligation to refund it.<sup>12</sup>

<sup>9</sup> First General Counsel's Report, MUR 5278 (Sept. 14, 2004) (finding reason to believe where federal candidate had signed a consent order with a state regulator admitting that he had moved funds from his state campaign to his federal campaign through intermediaries); Statement of Reasons, MUR 4408, 4409 (Feb. 9, 1998) (finding reason to believe when a candidate for congress made a \$3,500 contribution to a local party committee and at the same meeting, the party committee made a \$2,000 donation to the candidate, but declining to pursue enforcement due to the small amount at issue); see also Advisory Opinion 1996-33, at 2 (finding that it would violate the Act if committees acted "with the understanding that roughly equivalent contributions would be made to one another's campaigns") (emphasis added).

<sup>10</sup> See First General Counsel's Report, MUR 5304 at 4.

<sup>11</sup> See *id* at 9 (Jan. 21, 2004) (internal citations omitted); see also First General Counsel's Report, MUR 5406 (Jan. 27, 2005).

<sup>12</sup> 11 C.F.R. § 103.3(b).

UNOFFICIAL COPY

Jeff S. Jordan  
October 6, 2016  
Page 4

In short, the Complaint provides no basis to conclude that Respondents received a contribution in the name of another – and the available facts indicate that they did not. Accordingly, the Commission should promptly find that there is no reason to believe that Respondents violated the Act, and close the file.

Sincerely,



Thomas A. Willis  
Andrew Harris Werbrock  
Counsel to Ami Bera for Congress

AW:PS  
(00289041)

1404444014